

Background and Q&As

NOA Draft Economic Analysis

Proposed Critical Habitat for the Pacific Coast Population of the

Western Snowy Plover

For descriptions of the proposed critical habitat units, and a link to the Federal Register, go to our website at <http://www.fws.gov/arcata/>

The Pacific Coast western snowy plover is a small shorebird that weighs up to 2 ounces and is between 6 and 6½ inches long. It has a pale gray-brown back, white chest, and black legs and bill. Its average life span is about 3 years.

The Pacific Coast population of western snowy plovers consists of those birds that nest on the mainland coast, peninsulas, offshore islands, bays, estuaries, salt ponds, and rivers of the Pacific Coast from southern Washington to southern Baja California, Mexico. They are distinct from western snowy plovers that breed inland.

It is estimated that about 2,270 Pacific Coast western snowy plovers breed along the Pacific Coast from early March to late September. They make their nests on sand spits, dune-backed beaches, beaches at creek and river mouths, and salt pans at lagoons and estuaries. Pacific Coast western snowy plover chicks leave the nest within hours after hatching to search for food, but are not able to fly for about a month.

Today, only 28 major nesting areas remain. In addition to loss of nesting habitat due to development, the size of the Pacific Coast western snowy plover population has also declined. Human activity on beaches, such as walking, jogging, walking pets, operating off-road vehicles, and horseback riding, during the plover breeding season can inadvertently cause destruction of eggs and chicks. Encroachment of exotic European beach grass (*Ammophila arenaria*) into nesting areas and predation are other primary factors in the decline of the Pacific Coast western snowy plover.

Q. What is critical habitat?

A. Critical habitat is a term in the Endangered Species Act that identifies geographic areas containing features essential for the conservation of a threatened or endangered species, and which may require special management considerations or protection. Designation of critical habitat does not affect land ownership, establish a refuge or preserve and has no impact on private landowners taking actions on their land that do not require federal funding or permits and other relevant impacts of the designation.

Q. Why is the U.S. Fish and Wildlife Service (Service) proposing critical habitat for the Pacific Coast population of the western snowy plover at this time?

A. The Service designated critical habitat for this species on December 7, 1999, and again on September 29, 2005. The most recent designation was challenged in U.S.

District Court for the Northern District of California on October 2, 2008 (*Center for Biological Diversity v. Kempthorne, et al.*, No. C-08-4594 PJH). The complaint challenged the Service's analysis of economic impacts in its 2005 critical habitat rule, perceived inappropriate interpretation of the Endangered Species Act and its implementing regulations, and alleged political interference. The Service proposed revised critical habitat March 22, 2011. The deadline for submission of a final revised critical habitat designation to the *Federal Register* is June 5, 2012, as per a settlement agreement between the Service and plaintiffs.

Q. What is the purpose of the Notice of Availability?

A. The Service on January 17, 2012, published in the *Federal Register* its Notice of Availability (NOA) revising its March 22, 2011, proposal of critical habitat for the Pacific Coast Population of the Western Snowy Plover, along the shoreline of Washington, Oregon and California. The revision includes adjustments to the Bolsa Chica, California, proposed critical habitat unit (CA-46); potential exemption of Vandenberg Air Force Base (CA-32 and CA-33) from designation as a result of its newly approved Integrated Natural Resource Management Plan (INRMP); and to address errors in acreage in the March 2011, proposed rule. The NOA opens a 30-day public comment on the revisions as well as the draft Economic Analysis on the March 2011, proposed critical habitat designation. Comments need to be received by Friday, February 17, 2012.

In addition, the Service is seeking public comments to taxonomic changes accepted by the American Ornithological Union (AOU) resulting from genetic work splitting the Kentish plover (*Charadrius alexandrinus alexandrinus*) from the snowy plover (*Charadrius nivosus nivosus*; formerly *C. alexandrinus nivosus*).

Q. How is the current 2012 proposal different from the previous March 2011, proposed critical habitat designation?

A. The revised proposed critical habitat designation in the NOA has the same number of units as those proposed in our March 2011, rule. The Service also wishes to adjust acreages presented in the March 2011, rule. A summary table of the differences is below:

	2011 proposal	2012 NOA
Total:	28,261 ac, 68 units	30,497 ac, 68 units
WA:	6,265 ac, 4 units	6,265 ac, 4 units
OR:	5,219 ac, 13 units	5,218 ac, 13 units
CA:	16,777 ac, 51 units	19,014 ac, 51 units

The increases in acreage are largely due to changes in the Bolsa Chica unit (CA-46), and the accuracy in mapping non-federal land ownership.

For more information on the 2005 designation, the *Federal Register* notice is available at <http://policy.fws.gov/library/05fr56970.html>

Q. When will the Service make a final decision on critical habitat for this species?

A. The court-established deadline for submittal of the final designation is June 5, 2012.

Q. How will the designation of critical habitat affect non-Federal landowners?

A. The designation of critical habitat on non-Federal lands does not mean the government wants to acquire or control the land. Activities on private lands that do not require Federal permits or funding are not affected by a critical habitat designation. Critical habitat does not require landowners to carry out any special management actions or restrict the use of their land.

The Endangered Species Act prohibits any individual from engaging in unauthorized activities that will harm listed wildlife. That prohibition is in effect for any listed wildlife, with or without designated critical habitat.

If a landowner needs a Federal permit or receives Federal funding for a specific activity, the agency responsible for issuing the permit or providing the funds would consult with the Service to determine how the action may affect a listed species or its habitat.

Q. Do Federal agencies have to consult with the Service outside critical habitat areas?

A. Yes. Even when there is no critical habitat designation, Federal agencies must consult with the Service to ensure any action they carry out, fund, or authorize is not likely to jeopardize the continued existence of a listed species.

Q. What is the impact of a critical habitat designation on economic development?

A. The vast majority of human activities that require a consultation with the Service proceed with little or no modification. However, an economic analysis will be prepared and will solicit input from the public in order to thoroughly assess this concern.

Q. What impact will critical habitat designation have on beach use?

A. Outside of National Wildlife Refuges, the Service leaves beach management to other agencies that have direct responsibility for those areas, such as the California Department of Parks and Recreation. With or without critical habitat; however, the Service has consulted for several years with other Federal, state and local agencies on measures to protect this threatened species. Those measures vary from beach to beach and are subject to ongoing review by managers and biologists to ensure they meet the conservation needs of the species while being the least intrusive as possible for recreation and other uses.

Q. Is the Service seeking public comments on its proposal to designate critical habitat for the Pacific Coast population of the western snowy plover?

A. Yes. The Service is accepting comments from all interested parties until Friday, February 17, 2012.

Comments and materials may be submitted by any one of several methods:

1. Submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521.
2. Hand deliver written comments to the Arcata Fish and Wildlife Office, at the address above.
3. Submit comments online at *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R8-ES-2010-0070.

The comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours (8:00 am to 4:30 pm) at the Arcata Fish and Wildlife Office, 1655 Heindon Road, California 95521 (telephone 707-822-7201).

Q. What types of information is the Service seeking during this public comment period?

A. The Service requesting information related to economic impacts associated with designation of critical habitat for the Pacific Coast population of the western snowy plover in Washington, Oregon, and California. Review of the draft economic analysis is encouraged. The draft economic analysis is our evaluation of the type and amount of economic impact that we anticipate based on previous critical habitat designations for this species since 1999. In addition, we solicit response to our proposed changes to the Bolsa Chica Unit, exclusion of Vandenberg Air Force Base, and the Service's acceptance of the taxonomic split from the Kentish plover (*C. alexandrinus alexandrinus*).

The Service intends that any final action resulting from this proposal will be as accurate and as effective, as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule are hereby solicited.

Q. What is the purpose of an Economic Analysis as part of designating critical habitat?

A. The Service must take into account the economic impact of specifying any particular area as critical habitat. The Service may exclude any area from critical habitat, if it determines that the benefits of such exclusion outweigh the benefits of specifying the

area as part of critical habitat unless it determines, based on the best scientific and commercial data available, that the failure to designate the area as critical habitat will result in the extinction of the species.

Q. What protection does the Pacific Coast population of the western snowy plover currently receive as a listed species?

A. The Endangered Species Act forbids the import, export, or interstate or foreign sale of listed animals and plants without a special permit. It also makes “take” illegal – forbidding the killing, harming, harassing, possessing, or removing of listed animals from the wild. Federal agencies must also consult with the Service to conserve listed species on their lands and to ensure that any activity they fund, authorize, or carry out will not jeopardize the survival of a listed species.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species for scientific purposes, to enhance the propagation or survival of the species, or for incidental take in the course of certain otherwise lawful activities.

In addition, the Endangered Species Act requires that Federal agencies not only take action to prevent further loss of a species, but also pursue actions to recover species to the point where they no longer require protection and can be delisted.

Q. Has the Service prepared a recovery plan for this species?

A. Yes. The Service released a recovery plan in August 2007. The plan establishes recovery criteria and outlines actions that are needed to help conserve and recover the species. Since the plan was released, the Service has been working with other Federal, state and local agencies, landowners and volunteer groups to protect habitat along beaches while permitting human access for recreation and other uses. The recovery plan can be viewed or downloaded as a PDF file at http://ecos.fws.gov/docs/recovery_plans/2001/010501.pdf

Q. How does the Service determine what areas to propose for critical habitat?

A. Biologists consider physical or biological habitat features needed for life and successful reproduction of the species. These include, but are not limited to:

- Space for individual and population growth and for normal behavior
- Food, water, air, light, minerals, or other nutritional or physiological requirements
- Cover or shelter
- Sites for breeding and rearing offspring
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species

More questions?

Call or write:

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